

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (ABA) NO.244/2015

Mrs. Pallavi w/o Sameer Joshi ..vs.. State of Maharashtra, through PSO P. S.
Wadgaon, Yavatmal, Tq. Dist. Yavatmal.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. S. V. Manohar, Senior Advocate with
Mr. A. A. Naik, Advocate for applicant.
Mr. M. J. Khan, A.P.P. for non applicant-State

CORAM : A.B. CHAUDHARI, J.
DATE : JULY 14, 2015.

Heard learned counsel for rival parties.
Perused the earlier orders made by this Court on
07.04.2014 in Criminal Application No.149/2014 and on
23.06.2014 in Criminal Application No. 391/2014.

The relevant observations of order dated
07.04.2014 in Criminal Application No. 149/2014 are as
under:

*“Heard learned Senior Advocate Mr. Sunil
Manohar for the applicant, learned Public Prosecutor Mrs.
Bharti Dangre for the respondent / State and learned
counsel Mr. B.M. Karde for the complainant.*

2. *The applicant has been chargesheeted for the
offences punishable under Sections 406 and 420 of the
Indian Penal Code and Section 3 of the Maharashtra*

Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (hereinafter referred to as "the MPID Act" for brevity). Co-accused Sameer Joshi is her husband. I am told that further investigation is in progress and there are chances of submission of supplementary chargesheet against some other accused also.

3. *The allegations against the applicant and her husband, in brief, are that they made false promises to public in general that the amount invested in their company would be returned along with interest @ 12.5 % per annum. The applicant and her husband Sameer were running various companies under the group name 'ShreeSurya Group of Companies'. The total investment made by the depositors is stated to be Rs.67 Crores and the value of the property seized by the police is Rs.18 Crores.*

4. *I have gone through the chargesheet and various statements recorded by the police. It appears that the applicant and her husband on behalf of their financial establishments with an intention to cause wrongful gain to themselves and cause wrongful loss to others, made impracticable or commercially not viable promises while accepting the deposits from the depositors. The explanation to Section 3 of the Act makes it very clear that such acceptance of deposits with impracticable or commercially not viable promises are deemed to be an offence of 'fraudulent default'. As such there is no doubt that the applicant and her husband prima-facie appear to have*

committed fraudulent default by accepting money from the depositors in the name of ShreeSurya Group of Companies and by committing default in returning the amount as promised.

5. *The only question which requires determination in the present application is as to whether in the present circumstances, the applicant shall be released on bail or not ?*

6. *Learned Senior Advocate Mr. Sunil Manohar has submitted that the applicant was not concerned with the day to day affairs of the companies and that her name has been inserted as Director by her husband. It is submitted by Mr. Manohar that she had attended their office for few days when one of the female employees by name Mrs. Gadekar was on maternity leave. During that period the applicant had stated to have accepted certain deposits from the depositors. The prosecution has examined about 14 witnesses who have stated that they had given money to the applicant by way of deposits.*

7. *I have gone through the papers. Apart from the role of the applicant in accepting the deposits from the depositors, she had been shown as one of the account holders in most of the companies of accused Sameer Joshi. The applicant is an educated lady. Therefore, she cannot play complete ignorance of what her husband was doing. In my considered opinion, as already stated, prima-facie case under Sections 406 and 420 read with Section 34 of the*

Indian Penal Code as well as under Section 3 of the MPID Act exists. Investigation as far as the applicant is concerned, is completed. The only grey area is in respect of the balance amount so far not recovered by the police. As stated earlier, the amount deposited by the depositors is calculated at Rs.67 crores and the amount recovered in the form of properties and bank deposits is about Rs.18 crores. I have gone through the chargesheet and I do not find any comments of the investigation officer as to where the rest of the amount has gone. The applicant, however, contends that the companies were running in losses and therefore, the value of the property seized by the police is lesser than the value of deposits accepted by the company.

8. *The claims and counter claims will have to be examined by the trial Court at the time of trial. However, at this stage, since the investigation is completed and the applicant is in custody since 24th October, 2013 a case is made out for grant of bail to the applicant.*

9. *Learned counsel Mr. Sunil Manohar has relied upon the judgment of the Hon'ble Supreme Court in the matter of Sanjay Chandra Vs. C.B.I., reported at **AIR 2012 (SC) 830**. Learned Public Prosecutor Mrs. Dangre has relied upon the judgment of the Hon'ble Supreme Court in the matter of Y.S.Jagan Mohan Reddy Vs. CBI, reported at **(2013) 7 SCC 439**.*

10. *The Hon'ble Supreme Court in the judgment of Sanjay Chandra at paragraph 24 has reproduced paragraph*

18 of the judgment in the case of *State of U.P. v. Amarmani Tripathi*, (2005) 8 SCC 21. The said paragraph 18 of the Judgment in Amarmani's case can be reproduced as under :

“18. It is well settled that the matters to be considered in an application for bail are (i) whether there is any *prima facie* or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail.”

The Hon'ble Supreme Court in its judgment in the case of *Y.S.Jagan Mohan Reddy* also has stated at paragraph 35 as under :

“35. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/ State and other similar considerations.”

In the present case, no doubt, there is a *prima-facie* case against the applicant for the offences alleged. Most of the witnesses are depositors and the employees of the

applicant and her husband. The learned Public Prosecutor has apprehension in the mind that release of the applicant will result into tampering with the evidence by the applicant. In my opinion, this apprehension is not well founded inasmuch as the depositors are not going to be hostile to the prosecution case, as the evidence against the applicant is not only in the form of oral evidence but it is supported by documentary evidence.

11. *The learned Public Prosecutor has also submitted that there exists a danger of the applicant indulging into similar type of offences again. It was pointed out that similar offences are likely to be registered against the applicant and her husband in the neighbouring States. As far as this applicant is concerned, no material is placed before the Court that the applicant is likely to be accused in similar cases in other States. As far as repetition of similar offences by the applicant is concerned, to my mind, that does not appear to be possible in view of the fact that the applicant has remained in custody for about six months from the date of her arrest. What is further to be noted is that the applicant is co-accused and prime accused is her husband.*

12. *The applicant is permanent resident of Nagpur and she is not likely to abscond. She has got two children. One of them is only five years old. Learned Senior Advocate Mr. Manohar has submitted that the younger child has suffered psychological problem due to absence of his mother.*

It is submitted that this is an additional ground on which the applicant prays for bail.

13. *After having considered the facts of the case and the time the trial may consume to conclude and also considering the fact that a major portion of the investigation is completed and the chargesheet has been filed, I am of the view that further detention of the applicant in custody without there being any definite date of commencement of trial may amount punishment. It is well settled that under trial prisoner cannot be kept in custody by way of punishment. For all these reasons, I pass the following order.*

- i. The applicant be released on bail in the sum of rupees one lac with one solvent surety in the like amount.*
- ii. She shall surrender her passport to the Investigating Officer.*
- iii. She shall not leave the jurisdiction of the trial Court without prior permission of the trial Court.*

The application stands disposed of accordingly.”

The relevant observations of order dated 23.06.2014 in Criminal Application No.391/2014 are as under:

“Heard learned Senior Advocate Mr. Manohar for the applicant and learned Additional Public Prosecutor Mrs. Deshpande for the State.

The applicant is accused of the offence punishable under Sections 406, 409, 420, 465, 467, 468 and 471 read with Section 34 of Indian Penal Code and section 3 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999.

In all there are nine accused. The applicant and her husband Sameer Joshi are the prime accused. They floated various schemes at Nagpur and Amravati to lure the investors to deposit with them. It is alleged that they dishonestly made false representation to the investors that their money would be doubled within a particular time.

The present charge sheet pertains to Rajapeth Police Station, Amravati. The offence was registered on 30th October, 2013. The investigation has been completed and the charge-sheet has been filed.

It is alleged that instead of investing the depositors' money to make profit and to pay to the depositors, the money was used for purchasing properties. Most of the bank accounts have been frozen and the properties belonging to the applicant and Sameer have been seized.

The applicant is in custody since 24th October, 2013. Her husband Sameer is also in custody. The applicant has got two minor daughters to be looked after by her. She has been granted bail by this Court in similar case of Nagpur.

It may take quite a long time to commence the trial. Hence, I am inclined to grant bail.

Applicant be released on bail in the sum of Rs. One Lakh with one solvent surety in the like amount.”

The learned A.P.P. for the State vehemently opposed the application and argued that the present complaint relates to fraud in relation to the amount of Rs.82 Lacs and total fraud in the sum of Rs.1.62 Crores. It is not in dispute that the applicant is wife of Sameer Joshi, who is the prime accused and is in jail and who floated the scheme and collected money from the depositors. The orders quoted above made by this Court in various applications in relation to the applicant clearly go to show that looking to the minor daughters of the applicant and for want of effective purpose for putting her in jail, particularly when there is no guarantee that the trial would commence soon, I think, in the light of the view taken by this court in the above orders, prayer for grant of anticipatory bail should be allowed. However, the learned A.P.P. submits that for the purpose of investigation, if custody is required, the order of anticipatory bail would affect the interest of prosecution.

I think, the same can be taken care of by reserving liberty in favour of the prosecution.

In view of above, following order is passed.

ORDER

- (i) Criminal Application No. 244/2015 is allowed.
- (ii) In the event of arrest in Crime No.82/2015, registered with Police Station, Wadgaon, Yavatmal, Tq. Dist. Yavatmal for an offence punishable under Sections 406, 420 read with section 34 of the Indian Penal Code, the applicant-Mrs. Pallavi w/o Sameer Joshi be released on bail on her furnishing PR Bond in the sum of Rs.1,00,000/- with one surety in the like amount.
- (iii) The applicant shall cooperate the Investigating Officer as and when called.
- (iv) Liberty is granted to the prosecution to apply for modification of this order for claiming the police custody, if required during the course of investigation.

JUDGE

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